

EXPLANATORY MEMORANDUM TO
THE NATIONAL LOTTERY (REVOCATION AND AMENDMENT) REGULATIONS
2021

2021 No. 1009

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The National Lottery (Amendment) Regulations 2020 (“the 2020 Regulations”) were laid in December 2020. Their intended effect was to increase the minimum age to buy and sell National Lottery products from 16 to 18, by amending the National Lottery Regulations 1994 (“the 1994 Regulations”). The 2020 Regulations were scheduled to come into force on 1st October 2021.

2.2 This instrument revokes the 2020 Regulations, and amends the 1994 Regulations so that the minimum age to buy and sell National Lottery products still increases from 16 to 18, but also introduces approved sales mechanisms for the sale of National Lottery products by 16- and 17-year-olds. These are optional systems for retailers who choose to benefit from the additional flexibility they offer.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and territorial application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative context

6.1 Under Part 1 of the National Lottery etc. Act 1993 (“the 1993 Act”), the Secretary of State and the Gambling Commission owe statutory duties to exercise their respective functions under that Part in the manner most likely to secure that the interests of all players are protected, and the National Lottery is run with all due propriety. Subject to these duties, the Secretary of State and the Gambling Commission must, in exercising those functions, do their best to secure that returns to good causes are maximised.

6.2 Under section 12 of the 1993 Act, the Secretary of State may by regulations make such provision in relation to the promotion of lotteries that form part of the National Lottery as is considered necessary or expedient. In particular, such regulations may impose requirements or restrictions as to the minimum age of persons to whom or by whom tickets may be sold.

6.3 Section 60(4) of the Act allows for any order or regulations made under the Act to make different provision for different cases or circumstances.

7. Policy background

What is being done and why?

- 7.1 Following a public consultation in 2019, in December 2020 the government laid the 2020 Regulations, to come into force on 1st October 2021, raising the age at which National Lottery products can be purchased from 16 to 18.
- 7.2 The 2020 Regulations also increased the age at which National Lottery tickets could be sold from 16 to 18, as since the launch of the National Lottery in 1994 there has been parity between the minimum age to buy and sell National Lottery products. This is in keeping with some other age restricted products.
- 7.3 Following more detailed implementation discussions, the current operator and retailers raised concerns that the increase in the minimum age to sell National Lottery products may cause operational difficulties for some retailers who employ 16- and 17-year-olds, and that some types of sale risk being significantly impacted. The issue was raised that the processes that have to be followed for other age restricted products have flexibilities which were not included on the SI that is being revoked.
- 7.4 Having held a public consultation, the government is introducing two optional systems for retailers which will allow 16- and 17-year-olds to continue to handle National Lottery sales with the authorisation or approval from a person aged at least 18. This instrument therefore revokes the 2020 Regulations and amends the 1994 Regulations. The increase to the minimum age to buy and sell National Lottery products from 16 to 18 is restated, alongside two options for authorising or approving sales by 16- and 17-year-olds.
- 7.5 The revised system will offer maximum flexibility to retailers and is based on existing frameworks. Retailers will be able to either implement a system where an employee aged 18 or over approves sales by 16- and 17-year-olds in the moment, as is the case with the systems for alcohol sales in England, Wales and Scotland, or they can pre-authorise 16- and 17-year-olds to make such transactions, similar to the system for tobacco and nicotine vaping products in Scotland. Offering both approaches will meet the diverse needs of the National Lottery's 44,000 retailers who range from large supermarket chains to small independent family run shops.
- 7.6 This instrument also amends restrictions on sales of National Lottery tickets by vending machines to reflect the increase in the minimum age to buy to 18.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate this legislation.

10. Consultation outcome

10.1 A public consultation was held from 15th July to 12th August 2021, seeking views on an approved sales system for National Lottery products. Alongside this, a series of meetings was held directly with retailers and with trade associations. In total, 16

responses were received and of these 14 were supportive of the approved sales system, over and above the other option presented, which was to 'do nothing'.

11. Guidance

- 11.1 The current operator of the National Lottery is responsible for ensuring that retailers are aware of and understand this change. They will support retailers ahead of the implementation date.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is small. We estimate a total equivalent annual net direct benefit to business of £1.9 million.
- 12.2 The impact on the public sector is estimated to be small and positive. The National Lottery operator has estimated an increase in Lottery Duty of £5.8 million under an approved sales mechanism for National Lottery products.
- 12.3 A full Impact Assessment has not been prepared for this instrument because it has an equivalent annual net direct impact on business under £5 million.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to build on frameworks that many small businesses are already using for alcohol sales in England, Wales and Scotland, and for tobacco and vaping products in Scotland, in order to provide consistency. This instrument provides flexibility for businesses to implement in a way that is suitable for them, either through an 'in the moment' approval or with a system of pre-authorisation so that younger employees can make repeated sales. In addition, the policy aim of the approved sales mechanisms is intended to be an optional system for business to accompany the increase in the minimum age to 18 to sell National Lottery products.
- 13.3 The basis for the final decision on what action to take to assist small businesses comes from the responses to our public consultation, which included representatives of small retailers. Several of the consultation responses called for the approach to mirror existing approved sales mechanisms in order to minimise the burden for retailers, which is the approach taken in offering two different systems, enabling businesses to choose which is most appropriate for them.

14. Monitoring and review

- 14.1 The approach to monitoring of this legislation is to continue to monitor compliance through the existing processes already managed by the operator of the National Lottery to ensure that the minimum age is adhered to, under the terms of the current, third National Lottery licence.
- 14.2 In retail outlets, the operator runs an extensive mystery shopper programme – Operation Child – to check retailers are complying with the minimum age policy. This programme involves over 11,600 visits to retailers every year. The results of these checks are recorded and reported to the Gambling Commission on a quarterly basis, and are used to monitor compliance. The operator reserves the right to remove the retailer's terminal and terminate their retail agreement at any time for a failure to implement sufficient safeguards.

14.3 The Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Rt Hon John Whittingdale, OBE MP (Minister of State for Media and Data) has made the following statement: “As the equivalent annual net direct cost to business for this change is under £5 million, and there are no other factors which would make a statutory review particularly desirable, I believe that a statutory review clause is neither necessary nor appropriate for this measure.”

15. Contact

- 15.1 Madeleine Cullum at the Department for Digital, Culture, Media and Sport (telephone: 07870 604120 or email: madeleine.cullum@dcms.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Julie Carney, Deputy Director for Gambling and Lotteries at the Department for Digital, Culture, Media and Sport, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon John Whittingdale, OBE MP, Minister of State for Media and Data at the Department for Digital, Culture, Media and Sport, can confirm that this Explanatory Memorandum meets the required standard.